HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 5839/01
Baljinder Singh & ors.
Vs.

State of U.P.
& others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 06.07.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 5839 (MS) OF 2001

(Old No.14705 of 1990)

1/1. Baljinder Singh, S/o Sri Cheer Singh, R/o Village Hajire, Tehsil – Kashipur, District Udham Singh Nagar.
½. Amarjeet Singh, S/o late Sri Jaga Singh, R/o Village Hajire, Tehsil Kashipur, District Udham Singh Nagar.
1/3. Gurdeep Singh (minor), through his natural guardian Amarjeet Singh, S/o late Sri Joga Singh, R/o Village Hajire, Tehsil Kashipur, District-Udham Singh Nagar.

.....Petitioners.

Versus

1. State of U.P.
2. The Commissioner, Kumaon Division, Nainital/Appellate Authority under the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1961.
3. The Additional Collector/Prescribed Authority, Bijnor under the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1961.

.....Respondents.

Dated: 06.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri M.C. Bansal, Advocate for the petitioners and Standing Counsel for the respondents no. 1 to 3.

By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 14.05.1990 (Annexure No. 2 to the writ petition) and order dated 13.07.1989 (Annexure No. 1 to the writ petition). Further prayer has been made for a writ of mandamus directing the respondents no. 1 and 3 not to give effect to the orders dated 14.05.1990 and 13.07.1989 and not to interfere in any manner with the petitioners possession over Plot No. 177 situate in Village Hajiro, Tehsil Kashipur, District Nainital. Further prayer has also been made for a writ of mandamus directing the respondents to adjudicate upon the objection filed by the petitioners on merits.

Briefly stated, According to the case of the petitioners, the grand-father of the petitioners along with Sri Jeet Singh and Sri Mahendra Singh had purchased Plot No. 177 measuring 22.60 acres of land by registered sale deed dated 19.06.1972 from Sri Durgesh Nandan Singh, S/o Sri Krishna Nandan Singh, who was the recorded tenure holder and thereafter all the aforesaid three persons got their names mutated in the revenue record. Since then they are in possession and recorded as such. According to the petitioners, they being co-sharer being purchaser are occupants and tenure holders of the plots referred above.

The grand-father of the petitioners came to know in the month of August, 1986 that during the ceiling proceedings, Plot No. 177 of the tenure holder Sri Krishna Nandan Singh and Sri Durgesh Nandan Singh, has been declared as surplus.

During the proceedings under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act in the year, 1975, a notice was issued declaring the Plot No. 177 as surplus. However, the petitioners have alleged that no notice was issued to the grand-father of the petitioners as at that time he was in possession of Plot No. 177 total area 22.60 acres.

The petitioners, therefore, preferred objection under section 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 on 03.09.1986 before the Prescribed Authority requesting that they may be heard and they may not be dispossessed.

On the objections filed by the petitioners the Prescribed Authority by his order dated 09.09.1986 stayed the allotment of Plot No. 177 and directed that the tenure holder may be summoned and be heard in the matter.

Thereafter, the Prescribed Authority by his order dated 13.07.1989 has rejected the objection on the ground that the same is barred by time and stated that since the objectors have not filed any application for condonation of delay under Section 5, therefore, the objection is rejected.

Thereafter, the grand-father of the petitioners preferred an appeal and the same also met the same fate.

Relying upon the Full Bench in ***Upper Ganges Sugar Mills Ltd. Vs. Civil Judge, Bijnor 1969 R.D. 202,*** it has been observed in ***Dilbagh Singh Vs. State of U.P. and others (H.C.) 1978 RD Page 230,*** as under:-

"In view of the rival submissions on the first question, the controversy gets considerably narrowed. In the Full Bench case of Upper Gangs Sugar Mills Ltd. (supra) in paragraph 20 the Full Bench held-:

"The position, therefore, is that under the definition of the term 'tenure-holder' and the scheme of the Act the holder of a holding has to be considered to be a tenure-holder, whether or not he is recorded as such in the revenue records and there is nothing in the provisions of the Act that precludes his from the right of filing an objection to the statement issued by the Prescribed Authority to another person."

Section 11 (2) and 11(3) of the Act provide."

"(2) The Prescribed Authority shall, on application made within thirty days from the date of the order under sub-section (1) by a tenure-holder aggrieved by such order passed in his absence and on sufficient cause being shown for his absence set aside the order and allow such tenure-holder to file objection against the statement prepared under Section 10 and proceed to decide the same in accordance with the provisions of Section 12.

(3) Subjection to the provisions of sub-section (2) and Section 13, the order of the Prescribed Authority shall be final and conclusive and be not questioned in any court of law".

Dealing with sub-section (2) the Full Bench in paragraph 27 held that there appears to be no valid reason why the benefit of Section 11 (2) may not be available to every8 tenure-holder and why Section 11(2) should be regarded as limited to those tenure-holders only who have been served with a notice under Section 10(2). It went on to hold-

"In my opinion, the words 'a tenure-holder aggrieved by such order' embrace even those tenure-holders who have not been served with a notice under Section 10(2) and their scope is no manner curtailed by the words passed in hs absence and on sufficient cause bering shown for his absence'. A tenure-holder who has not been served with a notice and has also not been made a party would be treated as having been absent and the fact that he was not a party would itself sufficiently account for his absence. Section 11(2) should not, to my mind, be interpreted as withholding its benefit from a person who has committed no default at all while extending it to a person who has committed a default but furnishes. Sufficient case for it".

It is thus evident that Section 11(2) permits tenure-holders to file objections. Such tenure-holders may be those who have been served with a notice and the statement under Section 10(2). It also includes tenure holders who have not been given or served with any such notice or statement. The construction put by the Full Bench on Section 11 (2) embraces persons who claim to be tenure-holders and who having come to know of the declaration of their land as surplus land of some other persons, wish to challenge that declaration or

notification thereof in the gazette under Sec. 14. They are all entitled to file an objection under Section 11 (2) and get an adjudication thereon as required by Section 12.

Section 9 to 13 are in their operation and effect independent of Section 14 (3) to (7). Even though sub-sections (3) to (7) of Section 14 were on the statute book, yet the Full bench took the view that a tenure-holder would be entitled to file an objection under Section 11(2) even though he had not been given any notice. The legislature would be presumed to have this decision in its mind when it repealed subsections (3) to (7) Section 14 but did not touch the provisions of Section 9 to 13, by excluding from their purview, persons who claimed to be tenure holders, but who had not been served with a notice or statement under Section 10(2). In substance the repeal of Section 14(3) to (7) takes away the right of a lessee from a tenure-holder, to be heard".

A writ of certiorari is issued quashing the orders dated 13.07.1989 and 14.05.1990.

Writ petition is allowed. The matter is sent back to the Prescribed Authority for deciding afresh in accordance with law.

No order as to costs.

(Rajesh Tandon, J.)

06.07.2006

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